

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EDWIN SPENCER,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

CIVIL
DGF
CJM
Civil Action No. CV-04-4357
(Block, J.) (Mann, M.J.)

**STIPULATION AND ORDER
OF PARTIAL DISMISSAL**

WHEREAS, Plaintiff Edwin Spencer has asserted tort claims for personal injury and property damage, pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 2671 et seq., against Defendant United States of America;

WHEREAS, Plaintiff's tort claims arise from an automobile accident that occurred between Plaintiff's vehicle and a United States Postal Service truck on August 18, 2003, at the intersection of Saratoga Avenue and Marion Street in Brooklyn, New York;

WHEREAS, under the FTCA, the liability, if any, of the United States for Plaintiff's tort claims is determined in accordance with the substantive law of New York;

WHEREAS, New York's Comprehensive Motor Vehicle Insurance Reparations Act ("No Fault Law"), N.Y. Ins. Law § 5104, provides that a plaintiff may not recover for non-economic damages, including pain and suffering, unless he can prove that he suffered a "serious injury" within the meaning of the statute;

WHEREAS, Plaintiff has not suffered a "serious injury" within the meaning of the No Fault Act, arising from the automobile accident at issue in this lawsuit;

ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED, by and between the parties, that Plaintiff's claims for relief for personal injuries arising from the automobile accident at issue in this lawsuit are hereby dismissed with prejudice, without costs to any party;

IT IS FURTHER STIPULATED AND AGREED, by and between the parties, that this Stipulation is without prejudice to Plaintiff's claims for relief for property damage arising from the automobile accident at issue in this lawsuit.

AGREED TO BY THE PARTIES:

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Attorney for Plaintiff

By:


THOMAS D. WILSON (TW 6908)

Dated: August , 2005

By:


EDWIN SPENCER, Plaintiff

Dated: August 26, 2005

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By:


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Assistant United States Attorney
(718) 254-6060

September 2
Dated: August , 2005

So ORDERED

USSJ *9/6/05*